State Office of Administrative Hearings

Cathleen Parsley
Chief Administrative Law Judge

January 24, 2013

Les Trobman, General Counsel
Texas Commission on Environmental Quality
P.O. Box 13087
Austin Texas 78711-3087

Re: SOAH Docket No. 582-12-3294; TCEQ Docket No. 2011-0667-MWD-E;
In Re: Executive Director of the Texas Commission on Environmental Quality v.
West Houston Airport Corporation

Dear Mr. Trobman:

The above-referenced matter will be considered by the Texas Commission on Environmental Quality on a date and time to be determined by the Chief Clerk's Office in Room 201S of Building E, 12118 N. Interstate 35, Austin, Texas.

Enclosed are copies of the Proposal for Decision and Order that have been recommended to the Commission for approval. Any party may file exceptions or briefs by filing the documents with the Chief Clerk of the Texas Commission on Environmental Quality no later than **February 13, 2013**. Any replies to exceptions or briefs must be filed in the same manner no later than **February 25, 2013.**

This matter has been designated **TCEQ Docket No. 2011-0667-MWD-E; SOAH Docket No. 582-12-3294**. All documents to be filed must clearly reference these assigned docket numbers. All exceptions, briefs and replies along with certification of service to the above parties shall be filed with the Chief Clerk of the TCEQ electronically at http://www10.tceq.state.tx.us/epic/efilings/ or by filing an original and seven copies with the Chief Clerk of the TCEQ. Failure to provide copies may be grounds for withholding consideration of the pleadings.

Sincerely,

Richard R. Wilfong
Administrative Law Judge

RRW/ls
Enclosures
cc: Mailing List

STATE OFFICE OF ADMINISTRATIVE HEARINGS

AUSTIN OFFICE
300 West 15th Street Suite 502
Austin, Texas 78701
Phone: (512) 475-4993
Fax: (512) 322-2061

SERVICE LIST

AGENCY: Environmental Quality, Texas Commission on (TCEQ)

STYLE/CASE: WEST HOUSTON AIRPORT CORP

SOAH DOCKET NUMBER: 582-12-3294

REFERRING AGENCY CASE: 2011-0667-MWD-E

STATE OFFICE OF ADMINISTRATIVE HEARINGS	ADMINISTRATIVE LAW JUDGE ALJ RICHARD WILFONG

REPRESENTATIVE / ADDRESS	PARTIES
BLAS J. COY, JR. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY OFFICE OF PUBLIC INTEREST COUNSEL P.O. BOX 13087, MC-103 AUSTIN, TX 78711-3087 (512) 239-6363 (PH) (512) 239-6377 (FAX) bcoy@tceq.texas.gov	TCEQ PUBLIC INTEREST COUNSEL
JENNIFER N. COOK ATTORNEY TEXAS COMMISSION ON ENVIRONMENTAL QUALITY MC-175 P.O. BOX 13087 AUSTIN, TX 78711-3087 (512) 239-1873 (PH) (512) 239-3434 (FAX) jennifer.cook@tceq.texas.gov	TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
JAMES B BLACKBURN, JR. ATTORNEY BLACKBURN CARTER A PROFESSIONAL CORPORATION 4709 AUSTIN HOUSTON, TX 77004 (713) 524-1012 (PH) (713) 524-5165 (FAX)	WEST HOUSTON AIRPORT CORPORATION

LAWRENCE DUNBAR
DUNBAR HARDER, PLLC
1 RIVERWAY, SUITE 1800
HOUSTON, TX 77056
(713) 782-4646 (PH)
(713) 782-5544 (FAX)
ldunbar@dunbarharder.com

WEST HOUSTON AIRPORT CORPORATION

SOAH DOCKET NO. 582-12-3294
TCEQ DOCKET NO. 2011-0667-MWD-E

EXECUTIVE DIRECTOR OF THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, Petitioner	§	**BEFORE THE STATE OFFICE**
VS.	§	**OF**
WEST HOUSTON AIRPORT CORPORATION, Respondent	§	**ADMINISTRATIVE HEARINGS**

PROPOSAL FOR DECISION

I. INTRODUCTION

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) seeks to assess administrative penalties against West Houston Airport Corporation (Respondent) for seven violations of the Texas Water Code (Water Code), the Commission's rules regarding wastewater treatment facilities, permit conditions, and a prior agreed order. Respondent did not contest the violations, but did argue that the penalty was excessive because: (1) it was miscalculated under the TCEQ's Penalty Policy; and (2) the ED failed to consider: (a) that the violations caused no significant harm to the public or the environment, and (b) Respondent's extraordinary efforts and expense to close its wastewater treatment facility and connect to the City of Houston's regional wastewater treatment system.

The Administrative Law Judge (ALJ) finds that although the ED proved the violations, the proposed penalty of $125,750.00 is excessive. Accordingly, the ALJ recommends that the ED's proposed enhancement of the base penalty by $101,250.00 (225% of the total base penalty) based on Respondent's compliance history should not be assessed. Rather, Respondent should be assessed a penalty of $24,500.00.

II. JURISDICTION, NOTICE, AND PROCEDURAL HISTORY

Jurisdiction and notice are not disputed. These issues are addressed in the Findings of Fact and Conclusions of Law in the ALJ's attached Proposed Order without further discussion here.

The hearing on the merits was convened on September 10-11, 2012, before ALJ Richard R. Wilfong at the State Office of Administrative Hearings (SOAH) hearing facility in Austin, Texas. Staff attorney Jennifer Cook represented the ED. The Office of Public Interest Counsel was represented by Public Interest Counsel, Blas Coy. Respondent was represented by Lawrence Dunbar, attorney. The record closed on December 7, 2012, upon receipt of the parties' post-hearing reply briefs. The procedural history of this case is detailed in the Findings of Fact in the ALJ's Proposed Order.

III. DISCUSSION

A. Evidence and Argument

1. Background

Respondent owns and operates a small private airport located in the western portion of Harris County, just outside the Houston city limits. The airport has been in operation for 50 years. Before 1982 septic tanks were used to handle the domestic wastewater generated within the airport.[1] By 1982 the airport had experienced significant growth, including the development of considerable aircraft hangar and office facilities, a flight school, and aircraft maintenance and avionics shops. Some of the hangars included apartment-style living quarters used as residences.[2] Because of this growth the airport decided to obtain a permit to construct and operate a domestic wastewater treatment facility rather than continue the use of septic tanks. Respondent obtained Texas Pollutant Discharge Elimination System Permit No. WQ00125

[1] Tr. at 476-477.

[2] Tr. at 477.

(Permit) in 1982 and converted from septic tanks to a very small wastewater treatment facility with an average daily flow capacity of 0.002 million gallons per day (MGD).[3]

Respondent strived to properly maintain the wastewater treatment facility, but experienced frequent difficulties in operating efficiently and effectively.[4] As early as 2000, Respondent began looking into connecting its wastewater collection system to a regional treatment system to eliminate the problems they were having with the small wastewater treatment facility, and to avoid having to operate their own wastewater treatment facility in the future.[5] Then, in 2004, after determining that connecting to a municipal utility district (MUD) was not feasible, Respondent began to pursue approval to connect to the City of Houston's regional wastewater treatment system.[6] After lengthy discussions Respondent received a draft Sanitary Sewer Agreement (SSA) from the City in June 2009. Respondent informed TCEQ Staff of its plans to discontinue operation of its wastewater treatment facility and connect to the City's regional wastewater treatment system.[7] At the same time, Respondent entered into an Agreed Order that was approved by the Commission on June 3, 2009.[8] The Agreed Order addressed effluent limitation violations found during a TCEQ investigation conducted on June 12, 2007.

When the Agreed Order was entered into, Respondent and its counsel anticipated that the SSA would be signed shortly thereafter by the City, which would have allowed Respondent to discontinue use of its small wastewater treatment facility and come into full compliance with all applicable environmental regulations and the Agreed Order. However, numerous delays ensued, prolonging the eventual signing of the SSA by the City. The delays were not attributable to, or avoidable by, Respondent. The SSA was ultimately signed by the City on April 28, 2011.[9] Respondent immediately obtained the requisite approvals and completed the construction of

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[3] A daily average flow capacity of 0.002 MGD (2,000 gallons per day) is equivalent to the wastewater from 5 households, assuming 100 gallons of wastewater per day is generated per person for a family of four people per household. Tr. at 145-146.

[4] Tr. at 478-479, 482.

[5] Tr. at 479-480.

[6] *Id.*

[7] Respondent Ex. R-2.23; Tr. at 466.

[8] ED Ex. ED-2; TCEQ Docket No. 2007-1726-WMD-E In the Matter of an Enforcement Action Concerning West Houston Airport Corporation RN102096633.

[9] Respondent Ex. R-1; Tr. at 474.

facilities necessary to connect to the City's regional wastewater treatment system by the end of 2011.[10]

During this same time period that Respondent was experiencing unexpected delays in getting the SSA signed by the City, Respondent requested and received from TCEQ three extensions of the deadlines in the Agreed Order. By the third extended deadline, on October 20, 2010, TCEQ still had not received either Respondent's certification of compliance with the Agreed Order, or a fourth extension request; TCEQ Staff issued a formal investigation report noting the unresolved corrective actions.[11] On December 14, 2010, a Notice of Violation was issued to Respondent. On January 13, 2011, Respondent sent a letter indicating that it believed staying on the course it was on and connecting to the City was the most cost effective and best long-term solution to the persistent compliance problems experienced by Respondent's small wastewater treatment plant.[12] TCEQ Staff read the letter as a blatant refusal to comply with the Agreed Order and immediately reacted by requesting the Houston Regional Office to conduct an investigation of the status of the outstanding violations and enforce compliance. The investigation was conducted by TCEQ investigator, Mary Hopkins, the same day that Respondent submitted its letter dated January 13, 2011. Ms. Hopkins found ongoing violations of the terms of the Agreed Order, plus three additional record-keeping violations.

On April 18, 2011, Ms. Hopkins conducted a follow up investigation. On this occasion, Ms. Hopkins observed chunks of sludge floating in the receiving stream near Respondent's outfall and cited Respondent for a further violation.[13] This violation was combined with the violations from the January 13, 2011 investigation to comprise the seven violations at issue in this proceeding as follows:[14]

> **Violation 1** – failing to maintain required records and make them readily available, in violation of 30 Tex. Admin. Code (TAC) §§ 305.125(1) and 319.7(c) and the Permit, Monitoring and Reporting Requirements No. 3.

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[10] Tr. at 475

[11] Tr. at 31-33; ED Ex. ED-9.

[12] ED Ex. ED-11.

[13] ED Ex. ED-13; Tr. at 136-139.

[14] ED Ex. ED-A at 0004, para. 6.

Violation 2 – failing to accurately complete and submit discharge monitoring reports [DMRs], in violation of 30 TAC §§ 319.1 and 319.7(a)(4) and the Permit, Monitoring and Reporting Requirements Nos. 1, 2 and 3.

Violation 3 – failing to report effluent violations which deviated from the permitted limitation by more than 40% within five working days of becoming aware of the noncompliance, in violation of 30 TAC § 305.125(1) and the Permit, Monitoring and Reporting Requirements No. 7.c.

Violation 4 – failing to provide sufficient volume in the chlorine contact chamber to allow for 20 minutes of detention time, in violation of 30 TAC § 305.125(1) and (5); the Permit, Operational Requirements No. 1; and the Agreed Order, Ordering Provision No. 2(g)(i).

Violations 5 and 6 – failing to comply with permitted effluent limits, in violation of Water Code § 26.121(a); 30 TAC § 305.125(1); the Permit, Interim Effluent Limitations and Monitoring Requirements No. 1; and the Agreed Order, Ordering Provision No. 2(f).

Violation 7 - failing to prevent an unauthorized discharge from the wastewater collection system into or adjacent to water in the state in violation of Water Code § 26.121(a), 30 TAC § 305.125(1) and (5) and the Permit, Interim Effluent Limitations and Monitoring Requirements No. 4.

2. ED's Evidence

The ED offered over 40 exhibits that were admitted and presented the testimony of seven witnesses. The ED's testimony is summarized as follows:

- Ryan Byer, a member of the TCEQ Order Tracking Team responsible for tracking Respondent's Agreed Order, testified that TCEQ never received compliance documentation regarding the effluent violation corrective action or the chlorine contact chamber corrective action provisions in the Agreed Order. He also testified that TCEQ granted Respondent three extensions to comply with the Agreed Order, Respondent did not request a fourth extension, and Respondent failed to comply with the Agreed Order.[15]

- Kim Laird, a TCEQ Houston Region investigator, testified about the 2007 investigation resulting in the Agreed Order. She also testified about the inadequate size of the chlorine contact chamber, and Respondent's history of effluent violations dating back to 2004.[16]

[15] Tr. at 19-80.

[16] Tr. at 203-219.

- Mary Hopkins, a TCEQ Houston Region investigator, testified about the six violations documented in the January 13, 2011 investigation, and the discharge violation documented in the April 18, 2011 investigation.[17]

- Julian Centeno, Jr., a TCEQ municipal wastewater permit writer, testified about the required size of the chlorine contact chamber (140 gallons), and that adding zeros to the daily average loading report is an improper calculation.[18]

- Barbara Sullivan, manager at the TCEQ Houston Regional Office and team leader for Ms. Laird and Ms. Hopkins, testified about TCEQ's concerns with Respondent's repeated effluent violations. She also testified that small wastewater treatment facilities were common and numerous in the Houston area, and their collective impact was significant.[19]

- Jorge Ibarra, TCEQ enforcement coordinator, testified that the ED calculated the recommended penalty in accordance with consistent application of the TCEQ Penalty Policy, and the efforts made by the ED to keep the penalty low.[20]

- Jim Davenport, a technical specialist in the Water Quality Division of TCEQ, testified that the model used to categorize effluent violations is reasonable, and that the moderate categorization of the effluent limitation violations is reasonable in this case.[21]

3. ED's Argument

The ED argued that detailed and uncontroverted evidence was presented proving each of the seven violations. The only evidence offered by Respondent concerned its efforts to close its wastewater treatment facility and connect to Houston's regional wastewater treatment system. Respondent offered no evidence negating any of the violations nor did it present any evidence of corrective action that Respondent took to comply with the prior Agreed Order or to remedy the effluent violations. According to the ED, Respondent's efforts to connect to the City do not negate the violations. Nor do such efforts eliminate Respondent's legal responsibility to take other actions to comply with environmental regulations.

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[17] Tr. at 80-197.

[18] Tr. at 221-229.

[19] Tr. at 241-269.

[20] Tr. at 273-419.

[21] Tr. at 419-449.

The ED also argued, based on the testimony of Mr. Ibarra and Mr. Davenport, that both the base penalty components of the proposed administrative penalty, totaling $45,000.00, and the adjustments to the total base penalties, including the penalty enhancement of $101,250.00 based on compliance history, were calculated in accordance with the TCEQ Penalty Policy[22] as consistently applied in similar situations and reasonable.[23]

a. Calculation of Base Penalties

The ED calculated each base penalty as explained below:

1. Violation 1 – Improper record keeping

This violation is for failure to properly keep three records: 2009 lab result, calibration logs, and sludge analysis. Because it is a paperwork violation, it is categorized as a programmatic violation. It is categorized as a major programmatic violation because the records requested were not provided before a Notice of Violation was issued. Even though there are three records involved, the ED recommends assessment of only one single event.[24] According to the Penalty Policy, a single major programmatic is 10% of the statutory maximum, or $1,000.

2. Violation 2 – Inaccurate DMRs

This violation is for five inaccurate DMRs. Because it is a paperwork violation, it is categorized as a programmatic violation. It is categorized as a minor programmatic violation because some values in the records were correct. Since there were five incorrect DMRs, the ED recommends assessment of five single events.[25] According to the Penalty Policy, five minor programmatic events are equal to 5% of the statutory maximum, or $500.

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[22] ED Ex. ED-20.

[23] Tr. at 273-280.

[24] Tr. at 285-293; ED Ex. ED-18 at 0003; ED Ex. ED-20.

[25] Tr. at 294- 296; ED Ex. ED-18 at 0005; ED 20.

3. Violation 3 – Failure to report DMR deviations over 40%

This violation is for failure to provide the required written notice of non-compliance with DMR deviations over 40% of permit limits. Because it is a paperwork violation, it is categorized as a programmatic violation. It is categorized as a major programmatic violation because the notices were not provided within the time required. Since there were two notifications required for November 2009 and December 2009, the ED recommends assessment of two single events.[26] According to the Penalty Policy, two major programmatic events are 20% of the statutory maximum, or $2,000.

4. Violation 4 – Inadequate chlorine contact chamber capacity

This violation is for failure to provide the required capacity for the chlorine contact chamber. Because inadequate capacity can cause inadequate disinfection, there is a potential to harm the environment. So, this violation is assessed on the environmental matrix as a potential moderate.[27] Because it is a violation of a prior Agreed Order, the duration of the violation is from the Agreed Order date to the date the case was screened by the Enforcement Division.[28] This equals to eight quarterly events for a total of $8,000.

5. Violation 5 & 6 – Effluent limit violations

These two violations are for failure to comply with effluent limits. Because discharges are actual releases into the environment, effluent violations are assessed on the environmental matrix. Enforcement uses a model to assess effluent violations as major, moderate or minor.[29] The effluent violations are divided into two violations to assess some months as moderate violations on the environmental matrix, and keep the remaining violations minor, for penalty calculation purposes.[30] Using the model in this case, there were 10 months that qualified as

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[26] Tr. at 296-297; ED Ex. ED-18 at 0007; ED 20.

[27] Tr. at 297-302; ED Ex. ED-18 at 0009; ED Ex. ED-20.

[28] ED Ex. ED-20 at 0015.

[29] Tr. at 306-312; ED Ex. ED-22; Tr. at 420-428.

[30] Tr. at 302-318; ED Ex. ED-18 at 0011, 0013 and 0015.

major violations.[31] Despite this, the ED recommends only moderate categorization in this case. For this reason, the assessment is for 10 moderate violations, for a total of $25,000.

Like the chlorine contact chamber violation, violations 5 and 6 are violations of a prior Agreed Order, so the duration is from the date of the Agreed Order to the date the case was screened. Violation 6 contains the duration of the violation less the moderate months in violation 5. Violation 6 categorizes this remaining duration as minor. Taking the remaining time-frame, there are six quarterly events, for $6,000.[32]

6. Violation 7 – Discharge of sludge

This violation is for the sludge discharge. Because it is a discharge into the environment, it is on the environmental matrix. Even though it is common practice for the ED to categorize a discharge showing *E. coli* level of 16,000 colonies per 100 milliliters as a major violation, the ED recommended that it be categorized as a moderate in this case.[33] One monthly event is $2,500.

b. Base penalty adjustments for good faith efforts, compliance history, and other factors as justice requires

After calculating the total base penalty of $45,000, the TCEQ staff applied a reduction of $350.00 for "good faith" efforts and a reduction of $20,150.00 for "other matters that justice may require" attributed to Respondent's self-reporting. The ED then applied a compliance history enhancement of $101,250.00, which is 225 percent of the total base penalty. The ED argues that the compliance history adjustment is calculated as called for in the Penalty Policy and is, therefore, reasonable and appropriate.

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[31] ED Ex. ED-22.

[32] Tr. at 312-318.

[33] Tr. at 328-334; ED Ex. ED-19 at 0003.

4. Respondent's Evidence

Respondent offered over 40 exhibits that were admitted and presented the testimony of two witnesses. Respondent's testimony is summarized as follows:

- Mary Carter, a partner in the law firm of Blackburn & Carter in Houston, Texas, testified about her involvement on behalf of Respondent in the extensive effort to enter into the SSA with the City of Houston, and the series of unforeseeable circumstances that delayed execution of the SSA by the City which in turn unexpectedly delayed Respondent's ability to close its small, troubled, wastewater treatment facility and to achieve compliance with all environmental regulations by connecting to the City's regional wastewater treatment system.[34]

- Woody Lesikar, manager of the West Houston Airport and president of West Houston Airport Corporation, testified about: (1) Respondent's decision in 1982 to obtain a permit and install a small wastewater treatment facility to handle the airport's domestic sanitary wastewater rather than continue the use of septic systems; (2) the wastewater handling options that Respondent explored beginning in 2004, including on-site effluent irrigation, connecting to a nearby MUD, construction of a larger on-site wastewater treatment facility, and ultimately, connecting to the City of Houston's regional wastewater treatment system; (3) the unanticipated delays in finalization of the SSA with the City; and (4) the capital costs in excess of $400,000.00 that Respondent incurred to connect to the City of Houston and decommission Respondent's small on-site wastewater treatment facility.[35]

5. Respondent's Argument

Respondent did not contend the violations did not occur, or that they should be excused. Rather, respondent argued that considering the totality of the facts and circumstances, the amount of the proposed penalty (over $125,000.00) is excessive, unnecessary, and unreasonable.

a. Alleged Violations

Although Respondent did not deny the violations, it did contend that the violations should be considered in the proper context. In an effort to provide a proper perspective Respondent explained each violation as follows:

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[34] Tr. at 453-475.

[35] Tr. at 475-487.

Violation 1 – failing to maintain required records and make them readily available, in violation of 30 TAC §§ 305.125(1) and 319.7(c) and the Permit, Monitoring and Reporting Requirement No. 3.

On January 13, 2011, Mary Hopkins, a TCEQ investigator, conducted an inspection of Respondent's wastewater treatment facility and requested some of the records associated with this facility's operations.[36] The contract operator of the WHA facility, who was the person responsible for preparing the operating records for the facility, was not able to be on-site at the facility at the time of this inspection.[37] Of all the records requested, three records, specifically some lab results, a sludge analysis, and a calibration log, could not be found and made available for inspection at that time.[38] Subsequently, these records were found and submitted to the TCEQ.[39] The records were submitted after a Notice of Violation was issued, but before the ED's Preliminary Report and settlement offer were presented.[40] After reviewing these records, TCEQ staff found no problem with them.[41]

Violation 2 – failing to accurately complete and submit discharge monitoring reports, in violation of 30 TAC §§ 319.1 and 319.7(a)(4) and the Permit, Monitoring and Reporting Requirements Nos. 1, 2 and 3.

Respondent's contract operator had made a math error on one DMR by using zero flow as reported by the laboratory for calculating certain values on four other DMRs.[42] These were determined by TCEQ to be a violation of its regulations for not accurately completing these five DMRs.[43] Respondent corrected these DMRs and resubmitted them to TCEQ a few months later,[44] after a Notice of Violation was issued, but before the date of the ED's Preliminary Report

[36] Tr. at 84.

[37] Tr. at 88.

[38] Tr. at 95-96.

[39] Tr. at 165-166.

[40] Tr. at 100; ED Ex. ED-18 at 0003.

[41] Tr. at 100, 105 and 108.

[42] Tr. at 117.

[43] Tr. at 114.

[44] Tr. at 291-292.

and settlement offer.[45] Respondent also instructed the laboratory to not take samples in the future when no flow is being discharged from Respondent's wastewater treatment facility.[46]

> **Violation 3** – failing to report effluent violations which deviate from the permitted limitation by more than 40% within five working days of becoming aware of the noncompliance, in violation of 30 TAC § 305.125(1) and the Permit, Monitoring and Reporting Requirements No. 7.c.

Respondent's contract operator failed to submit to TCEQ a written report within five working days of becoming aware of certain exceedances of the permit limits by more than 40% for two consecutive months, November and December of 2010.[47] Respondent came into compliance by submitting the required written reports on May 9, 2011, after the Notice of Violation but before the ED's preliminary report and settlement offer.[48]

> **Violation 4** – failing to provide sufficient volume in the chlorine contact chamber to allow for 20 minutes of detention time, in violation of 30 TAC § 305.125(1) and (5); the Permit, Operational Requirement No. 1; and the Agreed Order, Ordering Provision No. 2(g)(i).

Respondent's wastewater treatment plant had a chlorine contact chamber with a volume capacity of approximately 12 cubic feet, when the requirement is 19 cubic feet.[49] However, this chlorine contact chamber was part of the originally designed and constructed plant that was approved by TCEQ's predecessor agency in 1982.[50] Subsequently, TCEQ determined that in order to provide at least 20 minutes of detention time during this plant's design peak flow of 7 gallons per minute, the chamber must have a volume capacity of 19 cubic feet.[51] Thus, Respondent agreed that its chlorine contact chamber, although originally approved by the State, was not of the size that the current regulations require.

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[45] ED Ex. ED-18 at 0005.

[46] Tr. at 122-123; ED Ex. ED-41.

[47] Tr. at 175-176.

[48] ED Ex. ED-18 at 0007.

[49] Tr. at 177.

[50] Tr. at 476.

[51] Tr. at 132-133.

Violation 5 and 6 – failing to comply with permitted effluent limits, in violation of Water Code § 26.121(a); 30 TAC § 305.125(1); the Permit, Interim Effluent Limitations and Monitoring Requirements No. 1; and the Agreed Order, Ordering Provision No. 2(f).

Respondent acknowledged that its small wastewater treatment plant had effluent discharges that exceeded its interim phase permit limits for 13 months during the period from June 2009 to May 2011, as shown on the table included in the Penalty Calculation Worksheets.[52] Respondent explained that most of these effluent discharges in excess of the permit limits were associated with ammonia-nitrogen (NH3-N).[53] The permit limit for ammonia-nitrogen was 2 mg/l.[54] Respondent's contract operator noted on his monthly DMRs that these violations occurred as a result of high flows entering the treatment plant from rainfall/runoff in the area.[55] The TCEQ investigation reports noted that Respondent's small wastewater treatment facility had a problem with inflow and infiltration in its collection system that allowed storm water runoff to enter the system and flow into the small treatment plant along with the small amount of wastewater generated from the airport property.[56]

Additionally, water quality samples taken upstream of Respondent's discharge point (during the April 18, 2011 investigation), showed a high background level of ammonia-nitrogen (15 mg/l) in the water, likely due to fertilizer runoff.[57] Therefore, the occasionally high levels of ammonia-nitrogen in Respondent's effluent discharges were likely also attributable to fertilizer in the storm water runoff entering the treatment plant as a result of inflow and infiltration.[58]

Violation 7 - failing to prevent an unauthorized discharge from the wastewater collection system into or adjacent to water in the state in violation of Water Code § 26.121(a), 30 TAC § 305.125(1) and (5) and the Permit, Interim Effluent Limitations and Monitoring Requirements No. 4.

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[52] ED Ex. ED-18 at 15.

[53] Tr. at 179.

[54] ED Ex. ED-1 at 2-3.

[55] Tr. at 153-154.

[56] Tr. at 153-155.

[57] Tr. at 157-159.

[58] Tr. at 161-162.

Respondent explained that this violation was for some sludge found near its outfall during TCEQ's April 18, 2011 investigation at Respondent's wastewater treatment facility. At the time, Respondent informed the TCEQ investigator that its contract operator was aware of the sludge and was taking steps to repair a part in the clarifier that had just failed.[59] This sludge was cleaned up the next day by the contract operator.[60] Although a sample of the sludge was taken by Ms. Hopkins and tested and showed high levels of *E-coli*, no test was conducted for *E-coli* of the samples that Ms. Hopkins took of water in the ditch upstream and downstream of where the sludge was found.[61] Respondent did not dispute that some sludge had been accidentally discharged from its small wastewater treatment plant as a result of a malfunction of its clarifier. However, the discharge was caused by the failure of a mechanical part, and not because of operator error or neglect. Further, it was cleaned up the next day, and there is no evidence that any of the sludge moved downstream from the vicinity of Respondent's outfall.

b. Factors to be Considered in Assessing any Administrative Penalty

Respondent argued, in accordance with 30 TAC § 70.5, that the remedies available to the Commission in enforcement cases include, but are not limited to, issuance of administrative orders with or without penalties. If TCEQ decides to assess an administrative penalty, Water Code § 7.053 specifies the following factors that TCEQ must consider in doing so:

(1) the nature, circumstances, extent, duration, and gravity of the prohibited act, with special emphasis on the impairment to existing water rights or the hazard or potential hazard created to the health or safety of the public;

(2) the impact of the violation on

(A) air quality in the region;

(B) a receiving stream or underground water reservoir;

(C) instream uses, water quality, aquatic and wildlife habitat, or beneficial fresh water inflows to bays and estuaries; or

(D) affected persons;

[59] Tr. at 138.

[60] Tr. at 156.

[61] Tr. at 371; ED Ex. ED-13 at 6.

(3) with respect to the alleged violator:

(A) the history and extent of previous violations;

(B) the degree of culpability, including whether the violation was attributable to a mechanical or electrical failure and whether the violation could have been reasonably anticipated and avoided;

(C) the demonstrated good faith, including actions taken by the alleged violator to rectify the cause of the violation and to compensate affected persons;

(D) economic benefit gained through the violations; and

(E) the amount necessary to deter future violations; and

(4) any other matters that justice may require.

According to Respondent, the record is void of any evidence that the violations cited against Respondent (1) created any significant hazard or potential hazard to the health or safety of the public, or (2) had any impact on a receiving stream, any instream uses, water quality, aquatic life and wildlife habitat, or on any affected persons. Respondent further contended that the history and extent of previous violations should be considered fairly and reasonably in light of the fact that: (1) the evidence shows no culpability on the part of Respondent; (2) Respondent demonstrated good faith in the actions it took; (3) there was little to no economic benefit gained by Respondent through the violations cited; (4) no amount is needed to deter future violations by Respondent; and (5) justice requires that Respondent's efforts in connecting to the City's regional wastewater treatment system, in compliance with the State's policy of encouraging regionalization, be properly considered in mitigation.

c. TCEQ Penalty Policy

Respondent argued that TCEQ Staff did not follow the Penalty Policy in calculating its recommended administrative penalty against Respondent with regard to Violation Nos. 4, 5, 6, and 7.[62] According to Respondent, TCEQ Staff failed to follow the procedures set forth in the Penalty Policy for determining the severity or degree of harm for Violation Nos. 4, 5, 6, and 7

[62] Respondent had no disagreement with the manner by which the base penalty was calculated for the document related violations (Violation Nos. 1, 2, and 3) using the Programmatic Penalty Matrix.

pursuant to the Environmental/Property Matrix. Rather, Respondent contended that TCEQ Staff used a Loading Ratio Calculator, that is not even mentioned in the Penalty Policy, to determine the harm associated with Violation Nos. 5 and 6.[63] Respondent also argued that with respect to Violation Nos. 4 and 7, TCEQ Staff assessed the degree of harm as moderate without evaluating the impact on the affected resources as discussed in the Penalty Policy.

Relying on the testimony of a TCEQ witness, Mr. Davenport, that any discharge from Respondent's wastewater treatment facility would have little or no impact on the quality of water in Buffalo Bayou, the "affected resource," Respondent argues that all the environmental-related violations (Violation Nos. 4, 5, 6, and 7) should be classified as causing minor harm, instead of moderate as assigned by TCEQ Staff. The effect of changing the degree of harm classification from "moderate" to "minor" would reduce the base penalty for Violation No. 4 from $8,000.00 to $500.00; Violation No. 5 would have been included in Violation No. 6 and the base penalty of $25,000 for Violation No. 5 would have been eliminated; the base penalty for Violation No. 6 would have been reduced from $6,000.00 to $5,000.00; and the base penalty for Violation No. 7 would have been reduced from $2,500.00 to $1,000.00.

Finally, Respondent contended that the Staff's adjustments to the base penalty did not fairly and reasonably consider Respondent's compliance history, nor other factors as justice may require; specifically, Respondent's extensive efforts and substantial cost to achieve full compliance with all environmental rules and regulations by connecting to the City's regional wastewater treatment system. Respondent surmised that the reason the ED recommended an arbitrarily excessive penalty is because TCEQ Staff took offense to Mr. Zeppa's letter dated January 13, 2011,[64] interpreting the letter as a blatant "decision not to comply with the Agreed Order." According to Respondent, the ED's biased attitude toward Respondent was illustrated in the ED's closing argument summary, which stated: "to the extent [the] penalty is considered high by the Respondent, it is due to . . . the Respondent's decision not to comply with a prior Agreed Order."[65] Respondent asserted that it never decided not to comply with the Agreed Order. To the contrary, Respondent asserted that it persisted in its pursuit of connecting to the City's

[63] Tr. at 354.

[64] ED Ex. ED-11.

[65] The ED's Initial Closing Brief at 5.

regional wastewater treatment system in its belief that this corrective action was the most cost-effective and best long-term solution to resolving all issues with its small wastewater treatment facility.

Respondent further argued that it is undisputed that: (1) connection to the City of Houston's regional wastewater treatment system allowed Respondent to come into complete compliance with all TCEQ rules; (2) Respondent initiated efforts to pursue connection to the Houston regional wastewater treatment system as early as 2006; (3) it was reasonable to expect that it would take about two years to obtain the City's approval for the connection; (4) delays in making the connection were not Respondent's fault; and (5) Respondent spent almost $400,000.00 in pursuing and eventually succeeding in connecting to the City's regional system. Respondent argued that notwithstanding these facts, TCEQ Staff recommended absolutely no credit or downward penalty adjustment attributable to them.[66] Respondent asserted that the ED's failure to consider these facts in mitigation of the proposed penalty was especially unjustified and unfair given the Water Code's specific encouragement and direction that all reasonable methods be used to connect small wastewater collection systems to regional wastewater treatment systems, which was exactly what Respondent did.[67]

Respondent emphasized that TCEQ Staff recommended that Respondent's administrative penalty be adjusted "as justice requires" only for the limited purpose of "reducing the impact of the self-reported violations" on the compliance history adjustment.[68] Respondent argued that according to the Penalty Policy, TCEQ Staff may recommend adjustment of the penalty amount "on a case-by-case basis upon consideration of factors unique to the situation."[69] Respondent then posited that its extraordinary effort for more than five years trying and ultimately succeeding in reaching an agreement to connect with the City of Houston's regional wastewater treatment system, at considerable expense, was unquestionably a unique situation that should have been given great weight by the ED and justified a substantial downward adjustment of the administrative penalty due to "other matters that justice may require."

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[66] Tr. at 419.

[67] Water Code § 26.003.

[68] Ed Ex. ED-18 at 1.

[69] ED Ex. ED-20 at 20.

Respondent concluded that the proposed penalty is unreasonably excessive because the ED: (1) improperly categorized the degree of harm to the affected resources for Violation Nos. 4, 5, 6 and 7, as "moderate" instead of "minor," contrary to the Penalty Policy; (2) made an unreasonable adjustment upward of 225% for compliance history; and (3) inappropriately failed to make any adjustment downward based on "other matters that justice may require" for Respondent's extraordinary efforts in connecting to the City of Houston's regional wastewater treatment system. For these reasons, Respondent argued that the TCEQ Penalty Calculation Worksheets prepared for this case should be revised as shown in the table below that compares the recommendation of TCEQ Staff with what Respondent finds would be fair and reasonable:

	ED	**Respondent**
Violation	Base Penalty	Base Penalty
1	$ 1,000	$ 1,000
2	500	500
3	2,000	2,000
4	8,000	500
5	25,000	0
6	6,000	5,000
7	2,500	1,000
Total Base Penalty	$ 45,000	$ 10,000
Adjustments		
- Compliance History	(225%)	(100%)
	$ 101,250	$ 10,000
- Good Faith	$ (350)	$ (350)
- Other Factors	$ (20,150)	$(19,650)
FINAL PENALTY	$ 125,750	$ 0

6. OPIC's Position

Based on the entirety of the record evidence OPIC concluded that:

- The ED has shown that Respondent was responsible for the alleged violations;

- Although aware of Respondent's position that certain violations were not classified correctly which, if corrected, could have resulted in lower base penalties, the ED has the ability to use discretion in making those judgments. Therefore, the ED's base penalty determinations are consistent with the Penalty Policy and similar cases;

- Respondent should be held accountable for the violations, but considering the ultimate outcome and the efforts of Respondent, to enhance the penalties by $101,250.00 (225 %) is unreasonable;

- The enhancement amount assigned by the ED is excessive; and

- An administrative penalty of $24,500.00 is sufficient to hold Respondent accountable for the violations, but also recognize the extraordinary efforts made, and the substantial cost incurred, to assure that the violations would be resolved and the potential for continuing harm to the environment would be avoided.

7. ALJ's Analysis

Based on the evidence, the ALJ concludes that the ED met his burden on all alleged violations and has calculated the amount of the base penalties consistent with the Commission's Penalty Policy and similar cases. However, the ALJ finds that the enhancement amount of $101,250.00 assigned by the ED based on Respondent's compliance history resulted in an excessive and unreasonable penalty. Accordingly, the ALJ agrees with OPIC and recommends a penalty of $24,500.00. This amount will hold Respondent accountable for the violations, but also recognize the extraordinary efforts made to ensure that Respondent's violations would be resolved and the potential for continuing harm to the environment would be permanently avoided. Respondent's extensive efforts, and substantial costs incurred, to connect to the City of Houston's regional wastewater treatment system and close its small wastewater treatment facility, should be recognized as a preferred resolution. Based on "other factors as justice may require," the ALJ recommends that the base penalty enhancement of $101,250.00 not be imposed.

With respect to the classification of the effluent violations for purposes of the base penalty, the ALJ finds that the ED's determinations are reasonable and consistent with the Penalty Policy. However, as previously stated, when the totality of the record evidence is

considered, the ED's proposed 225% increase over the base penalty lacks reasonable justification.[70]

The following additional facts, among others, support the ALJ's reduced penalty recommendation: (1) Respondent's wastewater treatment facility was probably the smallest wastewater treatment plant regulated by TCEQ;[71] (2) any discharge of pollutants from Respondent's small wastewater treatment facility would have little or no impact on water quality in the receiving resource, Buffalo Bayou;[72] (3) no evidence was presented of any significant harm to the environment or human health; (4) Respondent did not cause, nor could it have avoided, any of the unforeseeable delays in obtaining approval to connect to the City's regional wastewater treatment system;[73]and, in sharp contrast, (4) the ED's proposed penalty would be the largest administrative penalty for a domestic wastewater treatment plant that TCEQ Staff was aware of, and even larger than the largest penalty TCEQ Staff was aware of for an industrial site.[74]

IV. CONCLUSION

In conclusion, the ALJ recommends that the Commission adopt the attached Proposed Order assessing a $24,500.00 administrative penalty against Respondent.

SIGNED January 24, 2013.

RICHARD R. WILFONG
ADMINISTRATIVE LAW JUDGE
STATE OFFICE OF ADMINISTRATIVE HEARINGS

[70] Although not directly applicable to this case, in 2011 the Texas Legislature indicated its concern regarding excessive penalty enhancements attributable to compliance history by imposing a cap of 100%. Water Code § 5.757 (e-1).

[71] Tr. at 144.

[72] Tr. at 434, 447.

[73] Tr. at 465-476.

[74] Tr. at 49.

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

AN ORDER Assessing Administrative Penalties Against
West Houston Airport Corporation
TCEQ DOCKET NO. 2011-0667-MWD-E
SOAH DOCKET NO. 582-12-3294

On _____, the Texas Commission on Environmental Quality (Commission or TCEQ) considered the Executive Director's (ED) Second Amended Report and Petition (EDSARP) recommending that the Commission enter an enforcement order assessing administrative penalties against West Houston Airport Corporation (Respondent). Richard R. Wilfong, an Administrative Law Judge (ALJ) with the State Office of Administrative Hearings (SOAH), conducted a contested case hearing on this matter on September 10-11, 2012, in Austin, Texas, and presented the Proposal for Decision.

The following are parties to the proceeding: Respondent, the Commission's Executive Director (ED), and the Office of Public Interest Counsel.

After considering the ALJ's Proposal for Decision, the Commission makes the following Findings of Fact and Conclusions of Law.

I. FINDINGS OF FACT

1. Respondent owned and operated a wastewater treatment plant located at 18000 Groeschke Road (the Facility) near the City of Houston, Harris County, Texas, from 1982 through 2011.

2. In 1982, the Commission issued Texas Pollutant Discharge Elimination System Permit No. WQ0012516001 (Permit) to Respondent, which authorized Respondent to treat and dispose of domestic wastewater from its Facility. The Permit was amended on May 31, 2007. The Permit's expiration date was May 1, 2012.

3. Under the terms of the Permit, Respondent was allowed to discharge wastewater effluent at a daily average rate not to exceed 0.002 million gallons per day (MGD) under an Interim phase and 0.015 MGD under the Final phase, making this one of the smallest, if not the smallest, wastewater treatment plant in the state.

4. At its June 3, 2009 agenda, the Commission approved TCEQ Agreed Order, Docket No. 2007-1726-MWD-E (Agreed Order). The Agreed Order assessed a $28,980 penalty against the Respondent for alleged wastewater violations. Ordering Provision No. 2.f. of the Agreed Order required the Respondent to, within 105 days of the effective date of the Agreed Order, comply with effluent limits and certify in writing to the Commission the specific corrective actions the Respondent implemented to achieve compliance with the effluent limits. Ordering Provision No. 2.g.i. required the Respondent to obtain a larger chlorine contact chamber to address its inadequate capacity within 180 days of the effective date of the Agreed Order.

5. On July 28, 2009; November 23, 2009; and April 22, 2010; the Respondent filed requests for extension of the deadlines for performing the corrective action in the Agreed Order. The Executive Director (ED) granted the three extension requests. The Respondent did not request a fourth extension. The Respondent did not perform the corrective actions in Ordering Provisions Nos. 2.f and 2.g.i of the Agreed Order.

6. During an investigation of the Facility conducted on January 13, 2011, a TCEQ Houston Regional Office investigator documented the following violations of statutory and Permit requirements within the Commission's jurisdiction and the Agreed Order:

    a. 30 Tex. Admin. Code (TAC) §§ 305.125(1) and 319.7(c) and the Permit, Monitoring and Reporting Requirements No. 3, by failing to maintain records and make them readily available for review upon request by a TCEQ representative. Specifically, laboratory results from sludge analyses, the October 2009 laboratory results and calibration logs for chlorine residual analyses were not provided when requested, but were subsequently provided to TCEQ;

    b. 30 TAC §§ 319.1 and 319.7(a)(4) and the Permit, Monitoring and Reporting Requirements Nos. 1, 2 and 3, by failing to accurately complete and submit discharge monitoring reports (DMRs). Specifically, the carbonaceous biochemical oxygen demand (5-day) (CBOD-5) daily average concentration and loading were reported incorrectly for the monitoring period ending January 31, 2010, and the loading values for all parameters were reported incorrectly for the monitoring periods ending March 31, 2010; April 30, 2010; May 31, 2010; and September 30, 2010. These five DMRs were subsequently completed accurately and provided to TCEQ;

c. 30 TAC § 305.125(1) and the Permit, Monitoring and Reporting Requirements No. 7.c., by failing to report effluent violations which deviate from the permitted effluent limitation by more than 40% in writing to the Regional Office and the Enforcement Division within five working days of becoming aware of the noncompliance. Specifically, Respondent failed to submit written notification to the Regional Office and the Enforcement Division once becoming aware that the CBOD-5, total suspended solids (TSS), and ammonia nitrogen (NH3N) permitted effluent limits were exceeded by more than 40% during the months of November 2009 and December 2009. The required non-compliance notifications for these two months were subsequently provided to TCEQ;

d. 30 TAC § 305.125(1) and (5); the Permit, Operational Requirements No. 1; and the Agreed Order, Ordering Provision No. 2.g.i., by failing to provide 20 minutes of detention time in the chlorine contact chamber. Specifically, the chlorine contact chamber contained insufficient volume to allow the effluent to reside in the chamber for 20 minutes at peak flow;

e. Tex. Water Code (Water Code) § 26.121(a); 30 TAC § 305.125(1); the Permit, Interim Effluent Limitations and Monitoring Requirements No. 1; and the Agreed Order, Ordering Provision No. 2.f., by failing to comply with permitted effluent limits and failing to take necessary action to comply with permitted effluent limits for the months of November 2009 through April 2010, June 2010, July 2010, October 2010, and November 2010; and

f. Water Code § 26.121(a); 30 TAC § 305.125(1); the Permit, Interim Effluent Limitations and Monitoring Requirements Nos. 1 and 4; and the Agreed Order, Ordering Provision No. 2.f., by failing to comply with the Agreed Order and permitted effluent limits for the quarters containing June 2009 through October 2009, May 2010, August 2010, September 2010, and December 2010 through May 2011.

7. As a result of the January 13, 2011 investigation, a Notice of Enforcement (NOE) was issued on April 28, 2011.

8. During an investigation conducted on April 18, 2011, a TCEQ Houston Regional Office investigator documented that Respondent violated Water Code § 26.121(a), 30 TAC § 305.125(1) and (5) and the Permit, Interim Effluent Limitations and Monitoring Requirements No. 4, by failing to prevent an unauthorized discharge from the wastewater collection system into or adjacent to water in the state. Specifically, sludge was floating on the receiving stream near the outfall pipe, and a sample collected at this location showed an *E. coli* level of 16,000 colonies per 100 milliliters.

9. The unauthorized discharge of sludge from the Facility detected by the TCEQ investigator on April 18, 2011, was caused by a malfunctioning clarifier. Respondent removed the sludge the next day.

10. There was no evidence of any significant harm to the environment or human health that resulted from any of Respondent's effluent violations.

11. The discharges from the Facility caused little or no harm to the affected resources associated with the Facility.

12. As a result of the April 18, 2011 investigation, an NOE was issued on June 10, 2011.

13. On October 21, 2011, the ED filed a Preliminary Report and Petition (EDPRP), in accordance with Water Code § 7.054.

14. On November 1, 2011, the Respondent filed an answer to the EDPRP and requested a hearing.

15. On December 2, 2011, the case was referred to SOAH for a contested case hearing.

16. On December 19, 2011, the Commission's Chief Clerk issued notice of the preliminary hearing to all parties, which included the date, time, and place of the hearing, the legal authority under which the hearing was being held, and the violations asserted.

17. On January 27, 2012, the ALJ issued Order No. 1, which granted the parties' agreed motion to waive preliminary hearing, admitted documents to establish jurisdiction, and established a procedural schedule.

18. On August 24, 2012, the ED filed a First Amended Report and Petition (EDFARP).

19. On August 30, 2012, the ED filed a Second Amended Preliminary Report and Petition (EDSARP).

20. On September 4, 2012, the Respondent filed an Answer to the EDSARP.

21. The hearing on the merits was conducted on September 10 and 11, 2012, in Austin, Texas, by the ALJ. Respondent, the Office of Public Interest Counsel and the ED appeared through their representatives. Closing arguments were submitted in writing and the record closed on December 7, 2012.

22. It is the policy of this state, pursuant to Water Code § 26.003, to encourage and make use of regional wastewater treatment systems rather than small, individual wastewater treatment facilities, such as the Respondent's Facility, and to use all reasonable methods to accomplish this policy.

23. Respondent initiated efforts to obtain approval from the City of Houston to connect to its regional wastewater treatment system in 2006, and worked diligently over the next five years to eventually obtain such approval pursuant to a Sanitary Sewer Agreement signed by the City of Houston on April 28, 2011; Respondent spent almost $400,000 over this five-year period to obtain the City's agreement and to make the connection to the City's regional wastewater treatment system.

24. On April 20, 2012, the Houston City Council approved the agreement to allow Respondent to connect to the City's regional wastewater treatment system.

25. Respondent connected its wastewater collection system to the City of Houston's Park Ten wastewater treatment plant in December 2011, and dismantled its Facility in January 2012, with the approval of the TCEQ; Respondent no longer owns or operates its own Facility, instead utilizing the City's regional wastewater treatment system, which resolved all issues and violations associated with Respondent's Facility.

26. The ED recommended an administrative penalty of $125,750.00.

II. CONCLUSIONS OF LAW

1. Under Water Code § 7.051, the Commission may assess an administrative penalty against any person who violates a provision of the Water Code or of the Health & Safety Code within the Commission's jurisdiction or of any rule, order, or permit adopted or issued thereunder.

2. Under Water Code § 7.052, a penalty may not exceed $10,000 per violation, per day for each violation at issue in this case.

3. Respondent is subject to the Commission's enforcement authority, pursuant to Water Code §§ 5.013 and 7.002.

4. As required by Water Code § 7.055 and 30 TAC §§ 1.11 and 70.104, Respondent was notified of the EDPRP and the EDSARP and of the opportunity to request a hearing on the alleged violations and the proposed penalty.

5. As required by Tex. Gov't Code §§ 2001.051(1) and 2001.052; Water Code § 7.058; 1 TAC § 155.401, and 30 TAC §§ 1.11, 1.12, 39.25, 70.104, and 80.6, Respondent was notified of the hearing on the alleged violations and the proposed penalty.

6. SOAH has jurisdiction over matters related to the hearing in this matter, including the authority to issue a Proposal for Decision with Findings of Fact and Conclusions of Law, pursuant to Tex. Gov't Code ch. 2003.

7. Based on the above Findings of Fact, Respondent violated Water Code § 26.121(a); 30 TAC §§ 305.125(1), 305.125(5), 319.1, 319.7(a)(4) and 319.7(c); the Permit, Interim Effluent Limitations and Monitoring Requirements Nos. 1 and 4, Monitoring and Reporting Requirements Nos. 1, 2, 3, and 7.c., and Operational Requirement No. 1; and the Agreed Order, Ordering Provision Nos. 2.f. and 2.g.i.

8. In determining the amount of an administrative penalty, Water Code § 7.053 requires the Commission to consider several factors, including:

- The violation's impact or potential impact on public health and safety, natural resources and their uses, and other persons;
- The nature, circumstances, extent, duration, and gravity of the prohibited act;
- The history and extent of previous violations by the violator;
- The violator's degree of culpability, good faith, and economic benefit gained through the violation;
- The amount necessary to deter future violations; and
- Any other matters that justice may require.

9. The Commission has adopted a Penalty Policy setting forth its policy regarding the computation and assessment of administrative penalties, effective September 1, 2002.

10. Based on consideration of the above Findings of Fact, the factors set out in Water Code § 7.053, and the Commission's Penalty Policy, a penalty of $24,500 is justified and should be assessed against Respondent.

11. Based on the above Findings of Fact, no corrective actions are required.

NOW, THEREFORE, IT IS ORDERED BY THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY, IN ACCORDANCE WITH THESE FINDINGS OF FACT AND CONCLUSIONS OF LAW, THAT:

1. Respondent is assessed an administrative penalty in the amount of $24,500 for violation of the above noted statutes and rules. Respondent shall pay the administrative penalty within 30 days after the effective date of this Order. The payment of the administrative penalty listed herein will completely resolve the violations set forth by this Order. Checks rendered to pay penalties imposed by this Order shall be made out to "Texas Commission on Environmental Quality." Administrative penalty payments shall be sent with the notation "Re: West Houston Airport Corporation; TCEQ Docket No. 2011-0667-MWD-E" to:

Financial Administration Division, Revenues Section
Attention: Cashier's Office, MC 214
Texas Commission on Environmental Quality
P.O. Box 13088
Austin, Texas 78711-3088

2. The ED may refer this matter to the Office of the Attorney General of the State of Texas for further enforcement proceedings without notice to Respondent if the ED determines that Respondent has not complied with one or more of the terms or conditions in this Commission Order.

3. All other motions, requests for entry of specific Findings of Fact or Conclusions of Law, and any other requests for general or specific relief, if not expressly granted herein, are hereby denied.

4. The effective date of this Order is the date the Order is final, as provided by 30 TAC § 80.273 and TEX. GOV'T CODE ANN. § 2001.144.

5. The Commission's Chief Clerk shall forward a copy of this Order to Respondent.

6. If any provision, sentence, clause, or phrase of this Order is for any reason held to be invalid, the invalidity of any provision shall not affect the validity of the remaining portions of this Order.

ISSUED:

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

_____

Bryan W. Shaw, Ph.D., Chairman
For the Commission